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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

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Case Number: VSO-0530

This Opinion concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for continued access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."
1/

I. Background

For a number of years, the individual has been employed by a DOE contractor in a position for which a security clearance is required. In October 2000, the individual was arrested for Aggravated Driving While Intoxicated (DWI). As required by DOE regulations, the individual reported this incident to DOE Security. Because this information raised security concerns, the individual was interviewed in 2001 by a DOE Personnel Security Specialist. The interview did not resolve those concerns, and the individual was referred to a psychiatrist for an agency-sponsored evaluation. The DOE psychiatrist interviewed the individual, took blood and urine samples for laboratory testing, and administered the Minnesota Multiphasic Personality-2 (MMPI-2) test. 2/ After this examination, the DOE psychiatrist provided a written report of his evaluation to DOE security.

In this report, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse, and said that there was insufficient evidence of rehabilitation or reformation. In reaching this conclusion, the DOE psychiatrist cited the criteria for alcohol abuse set forth in the Diagnostic and Statistical

1/ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Opinion as access authorization or a security clearance.

2/ In his evaluation, the DOE psychiatrist concluded that the individual's responses to MMPI-2 test questions reflected an unrealistic level of virtue, and "shows an unwillingness or inability to disclose personal information. Individuals with this level of defensiveness tend to admit few psychological problems." DOE psychiatrist's evaluation at 5.

Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV). The DSM-IV defines alcohol abuse as being “[a] maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by one or more of the following, occurring within a twelve month period:” (I) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home; (ii) recurrent alcohol use in situations in which it is physically hazardous; (iii) recurrent alcohol-related legal problems; or (iv) continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol. The DOE psychiatrist found the individual’s DWI arrests in 1996 and 2000 to be the primary indicator of alcohol abuse. He also relied on the results of the individual’s blood tests, which showed a slightly elevated reading for the liver enzyme Gamma Glutamyltransferase (GGT). According to the DOE psychiatrist, this suggested, but did not prove, that the individual continued to abuse alcohol after his 2000 arrest. DOE Exhibit 3-1 at pages 8-9.

After reviewing this report and the transcript of the PSI, the Director of the local Security Office determined that derogatory information existed which cast into doubt the individual’s eligibility for access authorization. The Director informed the individual of this determination in a letter which set forth in detail the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization.

The individual requested a hearing on this matter. The Director forwarded the individual’s request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The hearing was convened near the individual’s job site. Eight witnesses testified at the hearing. Testifying for the DOE were a Personnel Security Specialist, the DOE psychiatrist, and the individual himself. Two of the individual’s co-workers, his housemate, an Employee Assistance Program (EAP) counselor, and a gastroenterologist testified for the individual.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information in possession of the DOE that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material. 10 C.F.R. § 710.8(j). That paragraph refers to information that the individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” The derogatory information cited in the Letter consisted of the DOE psychiatrist’s diagnosis and the individual’s two DWI arrests.

III. Findings of Fact and Analysis

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant

information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that his clearance should therefore not be restored.

At the hearing, the individual challenged the accuracy of the DOE psychiatrist’s diagnosis, arguing that he does not meet the DSM-IV standards for alcohol abuse because his two DWI arrests were almost four years apart. He pointed out that diagnostic tests that he took after his evaluation by the DOE psychiatrist’s evaluation showed a low probability for substance abuse. Furthermore, he claimed that the elevated Gamma GT reading detected as a result of the DOE psychiatrist’s blood test was a “very minor, non-specific finding,” Individual’s Exhibit 5, caused by strenuous exercise prior to the DOE psychiatrist’s evaluation, and not by excessive use of alcohol. In this regard, the individual testified that he had not had an alcoholic beverage since his October 2000 DWI. Tr. at 25. He further stated that continued alcohol abuse was inconsistent with his status as a marathon runner, Tr. at 14-15, and that after the October 2000 DWI, an ignition interlock system was placed on his vehicle for nine months, and at no time during that period was he unable to operate that vehicle because of alcohol consumption. ^{3/} When asked about his future intentions regarding alcohol use, he replied that “I’m not going to tell you folks that I’m not going to ever drink again in my life. . . . But I am going to say it’s going to be a cold day in hell, if I am intoxicated and I get behind a wheel. I am not going to drink to excess anymore.” Tr. at 30.

^{3/} An ignition interlock system is a device that can be installed in a motor vehicle to prevent operation of that vehicle by someone who has been drinking alcoholic beverages. In order to start a vehicle equipped with such a device, the driver must blow into a tube, and the device measures the driver’s blood alcohol content (BAC). According to the individual, the device attached to his vehicle would not allow him to drive if his BAC was over .02, and required that he periodically blow into the tube while operating the vehicle. Tr. at 18. He estimated that he “blew into that thing 10, 12 times a day every day” for nine months, and the machine never detected an excessive BAC during that period. Tr. at 18-19.

The individual also presented the testimony of an EAP counselor. The counselor testified that in the course of his employment, he assessed people for substance abuse disorders, and provided counseling to them. He stated that he had conducted 12 court-ordered counseling sessions with the individual as a result of his second DWI arrest, and that he did not believe that the individual warranted a diagnosis of alcohol abuse. Hearing Transcript (Tr.) at 118-119. When asked about the reasons for this conclusion, he said that

if you take a look at the language [of the DSM-IV], it's very specific about reoccurring within a 12 month time frame. . . . And . . . these two events, although I know that they're serious and should be treated as serious, are not reoccurring within a 12 month time frame. And there is clinical discretion to, you know, to adjust that somewhat. But in my opinion, that doesn't come close enough to meet that criteria.

Tr. at 122. For this reason, the EAP counselor did not refer the individual to an alcohol treatment program, although he believes the individual would have attended such a program if told that it was needed. Tr. at 123, 127. The EAP counselor further testified that the individual did not exhibit the characteristics of someone who was experiencing alcohol-related problems in that he was not missing an inordinate amount of time at work or having problems at home. Tr. at 125-126. Finally, the EAP counselor stated that, even if the individual warranted a diagnosis of alcohol abuse, the counselor would conclude that the individual had made an adequate showing of reformation based upon his statement that he had not used alcohol since his October 2000 DWI. Tr. at 128-129.

The individual also presented the testimony of a gastroenterologist, two co-workers, and his housemate. The gastroenterologist stated that an elevated GGT level is not necessarily an indication of alcohol abuse, that strenuous exercise can cause an elevated GGT, and that his review of the individual's most recent lab work and his interview with the individual revealed no signs of alcohol abuse. Tr. at 154-162. The two co-workers testified that the individual is an excellent worker who has shown no signs of alcohol abuse at work. Tr. at 109-111, 145. The individual's housemate said that he has been sharing a house with the individual since December and has not seen the individual consume alcoholic beverages. He added that the individual trains for up to 23 hours a week in preparation for an iron man triathlon. His weekly regimen includes 30 to 40 miles of running, 10 to 12 thousand meters of swimming and up to 300 miles of biking. He testified that "going near [alcohol] isn't even an option for [the individual] right now." Tr. at 175.

The individual also presented documentary evidence in support of his eligibility for access authorization. This material included a written substance abuse assessment performed by a local counseling service and the results of laboratory and psychologic tests administered by the counseling service after the DOE psychiatrist's evaluation. The assessment was based on information provided by the individual during an interview, and on the results of the Michigan Alcoholism Screening Test (MAST), the Alcohol Severity Index (ASI), the Substance Abuse Subtle Screening Inventory (SASSI) and the Beck Depression Inventory (BDI).

The ASI measures the effect of alcohol use in seven areas of a patient's life. The potential scores in each area range from zero to 10, with 10 indicating a severe need for treatment. The individual's score in all seven areas was zero, indicating that there was "no real problem, treatment not indicated." Substance Abuse Assessment, Individual's Exhibit 1, at 2. The individual's MAST score "was '2' indicating no significant mild problems with drinking." Id. His SASSI and BDI scores correlated with a "Low Probability of having a substance abuse problem," and an absence of any depressive disorders. Id.

The local counseling service concluded that the individual does not

currently meet the criteria for alcohol abuse or dependence as described by the [DSM-IV]. He does have a history of abuse in the past as evidenced by recurrent driving while drinking. . . . He is employed, living in a stable environment and reports no alcohol use for the past 17 months consecutively. If he were to again abuse alcohol as evidenced by his substance use resulting in a failure to fulfill obligations at work or at home, using again while driving, substance related legal problems or continued substance use despite having persistent or recurrent social or interpersonal problems due to the use, he would need to be re-evaluated for treatment.

Id. at 3.

As set forth above, the individual has presented evidence tending to support his contention that he does not suffer from alcohol abuse. However, for the reasons that follow, I accord greater weight to the written evaluation and testimony of the DOE psychiatrist. During his testimony at the hearing, the DOE psychiatrist acknowledged that the individual's two DWIs in a four year period technically did not meet the criteria for alcohol abuse set forth in the DSM-IV. Nevertheless, he pointed out that the DSM-IV guidelines were never intended to be applied in a rote, "cookbook" fashion, but were instead intended to be used in conjunction with the clinical judgement of a trained professional. Tr. at 47, DOE psychiatrist's evaluation at 7. ^{4/} He then set forth his reasons for going beyond the DSM-IV criteria.

^{4/} The section of the DSM-IV entitled "Use of Clinical Judgement" states, in pertinent part, that

The diagnostic categories, criteria, and textual descriptions [in the DSM-IV] are meant to be employed by individuals with appropriate clinical training and experience in diagnosis. It is important that DSM-IV not be applied mechanically by untrained individuals. The specific diagnostic criteria included in DSM-IV are meant to serve as guidelines to be informed by clinical judgement and are not to be used in a cookbook fashion.

DSM-IV at xxxii.

One factor considered by the DOE psychiatrist was that both DWIs occurred while the individual held a security clearance. He reasoned that clearance holders are made aware that DWIs and excessive alcohol use are unacceptable and could have serious repercussions. Therefore, if the clearance holder is “unwilling or unable to continue his sobriety in that context, it’s more of a diagnostic sign that he has a problem with alcohol.” Tr. at 45.

The DOE psychiatrist also considered the fact that the individual’s blood alcohol content (BAC), measured after each arrest, was approximately twice the legal limit, but that the individual only admitted to having consumed a fraction of the amount of alcohol that would be necessary to produce such results. Tr. at 42. Regarding the 1996 DWI, the individual said that he had had four 20-ounce beers (80 ounces) over a four hour period prior to his arrest. 2001 Personnel Security Interview (PSI) at 37. However, after the arrest, the individual’s BAC was measured at 0.17 and 0.16, levels commensurate with the consumption of 12 12-ounce beers (144 ounces) over that same period of time. DOE psychiatrist’s report at 2. Similarly, the individual stated that in the four hours prior to his 2000 DWI arrest, he consumed three 12-ounce beers and a half-glass of champagne. PSI at 17. After the arrest, the individual’s BAC registered at 0.16 and 0.14, readings consistent with the consumption of approximately 11 beers. DOE psychiatrist’s report at 3.

An additional factor in the DOE psychiatrist’s diagnosis was the individual’s elevated GGT. In his report, the DOE psychiatrist stated that normal reference range for GGT at the laboratory that performed the individual’s bloodwork was 5 to 40, with the individual’s GGT at 46. The DOE psychiatrist then quoted the DSM-IV: “‘One sensitive laboratory indicator of heavy drinking is an elevation (> 30 units) of . . . GGT. At least 70 percent of individuals with a high GGT level are persistent heavy drinkers (i.e., consuming eight or more drinks daily on a regular basis).’ (Page 218).” He opined that excessive alcohol use is the most common cause of abnormal GGT elevation, and noted that the individual did not seem to be affected by the next most common causes, *i.e.*, infectious hepatitis, liver damaging medications, or symptomatic acute medical illnesses. DOE psychiatrist’s report at 6. At the hearing, the DOE psychiatrist also testified that the individual’s two DWIs suggested that excessive alcohol consumption was the cause of the elevated GGT reading. Tr. at 49. He added that in order to be considered rehabilitated, the individual would first have to admit that he has a drinking problem, abstain from alcohol use, and take part in an outpatient alcohol treatment program of approximately one year’s duration. DOE psychiatrist’s report at 8, Tr. at 68-69.

In support of his contention that the elevated GGT reading was due to intense exercise, and not to alcohol consumption, the individual submitted a number of articles from the National Library of Medicine and other sources. These articles examined the effects of long distance running and other strenuous exercise on the liver and other organs. In essence, they state that heavy exercise can significantly increase the output of GGT and other liver enzymes. Individual’s exhibit 5.

The Individual also testified that after reading these articles, he decided to perform a test. He ran 15 miles one morning, had a blood sample taken later that day and tested, and then had another blood

test performed after a period of rest. 5/ The first test produced a GGT reading of 38 units, and the second, a reading of 34 units. Individual's exhibit 4. The individual therefore maintains that his elevated GGT was due to heavy physical exertion, and not to excessive alcohol use.

The information presented by the individual demonstrates, at most, that strenuous physical exertion can produce elevated liver enzyme levels. Indeed, the DOE psychiatrist acknowledges this in his report. 6/ However, based on the record in this matter, I agree with the DOE psychiatrist that the individual's elevated GGT was more likely due to alcohol consumption than to exercise. In this regard, the DOE psychiatrist testified that his laboratory tests of the individual did not indicate the existence of heavy exercise trauma.

In my labs, [the individual] has a few minor abnormalities, a slightly elevated BUN, a slightly [diluted] blood volume as manifested by a low hematocrit, but that's about it. The other things which often can be abnormal with exercise are normal in his case. One of them is the total bilirubin. His is even on the low side. If you run a lot, . . . you can cause blood cell hemolysis, rupturing of the little blood cells that you're traumatizing as you're running along and that will increase your bilirubin, and that's pretty commonly found in runners. And his was on the low side when I saw him. White blood count is typically up, and his is on the low side. His other two liver enzymes, AST and ALT are within normal range. So . . . it doesn't look like he's been having heavy trauma from running.

Tr. at 54-55. Moreover, even if I were to find that the individual's exercise regimen resulted in raised GGT levels, this would not preclude excessive consumption of alcohol by the individual. This is because, as pointed out by the DOE psychiatrist, it is possible that both factors contributed to the elevated reading. Tr. at 53.

It is the individual's position that the excessive consumption of alcohol could not have been a contributing factor because he has not consumed any alcoholic beverages since his October 2000 DWI. Tr. at 23, 25. However, I did not find the individual's testimony concerning his level of alcohol consumption to be credible. As an initial matter, in his communications with the DOE the individual repeatedly and grossly understated the amounts of alcohol that he had consumed prior to each of his DWIs. DOE exhibits 1-3, pg. 4 and 1-5, pg. 2; DOE psychiatrist's report at 2, 3; PSI at 14-17; 62. At the hearing, when asked about his alcohol consumption prior to each of his arrests, he admitted that he drank amounts sufficient to produce the BAC readings taken on each occasion. Tr. at 25, 37-

5/ The individual's testimony suggests that six days elapsed between the two tests. Tr. at 180. However, the dates on the two lab reports indicate that the first sample was drawn on February 8, 2002 and the second on March 8, 2002. Individual's exhibit 4.

6/ "Trauma or unusually vigorous exercise are uncommon causes for elevated [GGT] levels, and given [the individual's] . . . training regimen provide a possible, but unlikely, explanation for his elevated [GGT] liver enzyme levels." DOE psychiatrist's report at 6.

38. He explained that he did not intentionally misstate the amounts that he consumed, but that after having 19 months to think about it, his recollection now was that he had consumed amounts consistent with the BAC readings. Tr. at 37. Because I believe that the passage of significant amounts of time tends to degrade, and not to enhance, one's memory, I conclude that the individual intentionally minimized the amounts of alcohol that he drank before his arrests.

In addition, testimony given during the hearing by one of the individual's own witnesses, a co-worker, directly contradicted the individual's claim that he has abstained from alcohol use since his 2000 DWI.

- Q. When was the last time you saw [the individual] have a drink of alcohol?
- A. I think I've seen him have one drink in the last 18 months, and it was – it happened to be a beer. . . . And I think – I believe I've seen him have one drink, one beer over the holidays, and it was at his house, and we had a beer together. But when we were working jobs, he would always have to blow into that goofy tube, and so I know that he didn't have a drink for the eight months that that was on, that that device was on his car.
- Q. So that was this year, this past holiday?
- A. Would have been last year, particularly if it was around the holidays.
- Q. So in '01 around Christmas?
- A. Thanksgiving or Christmas, that kind of holiday, yes.
- Q. Of 2001?
- A. Yes. I'd forget and be social and, you know, he'd come over to the house or something and I'd say, "Oh, you want a beer?" I'd be having a beer. And he'd say, "No, but I'll take a Pepsi."
- Q. You mean in '01 or '00?
- A. '01. It's '02 right now, so it would have been '01 maybe.
- Q. So it would have been '01?
- A. Yes.

Tr. at 150-151. The individual testified that his co-worker was mistaken, and that the incident to which he referred occurred before the October 2000 DWI. Tr. at 182. However, the co-worker specifically tied the incident to the 2001 Thanksgiving-Christmas holiday season. In view of this fact, and in light of the individual's history of minimization of his alcohol use, I find the co-worker's testimony in this regard to be more convincing.

Moreover, the individual's lack of candor concerning his alcohol use undermines the validity of the favorable assessments that he received from the local counseling service and, during the hearing, from the EAP counselor. This is because each of these assessments relied, in substantial part, on information provided by the individual during interviews conducted with the individual. Substance

Abuse Assessment, Individual's exhibit 1 at 2; Tr. at 130. ^{7/} For these reasons, I attribute greater weight to the DOE psychiatrist's assessment than to those proffered by the individual. The individual, to his credit, candidly admitted he does not intend to give up drinking alcohol, but will instead attempt to limit his usage, especially on occasions when he will be driving. Tr. at 30. Given the fact that he tried to limit his drinking after his first DWI and was subsequently arrested again for that same offense, I am not at all confident that the individual can continue to drink, and at the same time, avoid substantial alcohol-related legal and professional problems. I therefore concur with the DOE psychiatrist's diagnosis that the individual suffers from alcohol abuse, with insufficient evidence of reformation or rehabilitation.

IV. Conclusion

As set forth above, I find that the individual has failed to mitigate the DOE's security concerns under section 710.8(j) of the DOE's Personnel Security Regulations. Based on the record in this proceeding, I am therefore unable to conclude that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored. The individual may seek review of this Decision by an Appeal Panel pursuant to the regulation set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: November 7, 2002

^{7/} This information specifically included the individual's assertion that he had abstained from alcohol use since the October 2000 DWI. Individual's exhibit 1 at 2, 3; Tr. at 128.